IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2529 OF 1992

Suresh Sunderrao Nayak)
a trustee of the Sree Taram Trust,)
a trust registered under the)
Bombay Public Trust Act and having)
having its registered office at)
36, Upakram, Liberty Garden,)
Road, No.1, Malad (West))
Mumbai - 400 064.)..Petitioner.

V/s.

1. M.K.Pandey, Director of)
Income Tax (Exemption))
having office at Aayakar)
Bhavan, M. Karve Road,)
Mumbai - 400 020.)
)
2. A.K.Gowda, Income tax Officer)
(OSD II) Director of Income)
Tax (Exemption) having his)
Office at Aayakar Bhavan,)
M. Karve Road, Mumbai-400 020.)
)
3. A.B.Joshi, Assistant Director)
of Income Tax (Exemption) I(2))
having office at Aayakar)
Bhavan, M. Karve Road,)
Mumbai - 400 020.)..Respondent.

Mr.P.Pardiwala with Kr. Kunal Vajani and Ms.Rati Lodha i/b. Wadi Ghandy & Co. for Petitioner.

Mr.R.K.Sharma for respondents.

CORAM : H.L.GOKALE AND
J.P.DEVADHAR, JJ.

DATED : 16TH OCTOBER, 2006.

JUDGMENT (PER H.L.GOKHALE, J.)

1. This petition is filed by trustees of a charitable Trust registered under the Bombay Public

Trust Act. The trust is shortly known as Sree Tarama Trust. Apart from propagation of one Sree Ramdevi's teachings and philosophy, the Trust has been providing for the medical facilities, maintenance and feeding of the poor, etc. Amongst other activities, the Trust is supposed to be working for the benefits of its devotees and Sree Rama Devi, having a temple at Ahmednagar.

2. The Trust is also registered under section 11 read with 12 A of the Income Tax Act, as a result, the income from property held by this Trust is not included in the total income when it comes to assessment of its income. It is the case of the Trust that it is set up for a charitable purpose within the purview of section 2(15) of the Act so as to provide relief to the poor, education and medical reliefs and other object of general public utility. The Trust was initially granted exemption under section 80G of the Income Tax on 2nd August, 1985 which was valid till 31st March, 1987. This enabled the Trust to receive donations for the aforesaid purposes. The exemption certificate was renewed from time to time till 31st October, 1991. The Trust has been filing its returns and statement of accounts to the Charity Commissioner as well as to the concerned Income Tax Officer from time to time.

3. The Trust applied for the renewal of its

exemption certificate on 26th September, 1991 and forwarded the necessary information such as statement of accounts for three previous assessment years, registration certificate under section 12A of the Income Tax, certificate under section 80G valid upto 31/3/1990 as well as certificate under Bombay Public Trust Act. The Income Tax officer who looked into this application wrote back to the petitioner Trust on 10th January, 1992 recording that donations received consist of small funds. It was also noted that same persons had made donations frequently. It was noted that medical relief account and prayers account reveal some names again and again. The I.T.O., therefore, sought the details of actual beneficiaries and criteria of identifying and selecting them. The petitioner sent reply and pointed out the number of devotees of this Trust is small and they were situated mainly in Ahmednagar, Bombay, Trivandrum, Madras and Kuwait. It was further pointed out that monthly maintenance relief and medical aid is mainly given to dedicated disciples of Devi Ramadevi who were stationed at Ahmednagar, where a temple of Sree Rama Devi is situated. It was pointed out that the Trust provided for feeding of poor at Ahmednagar and also poor people at Madras and Trivandrum. Apart from sending its reply to the I.T.O. on 20th January, 1992 further detailed representation was made to the Director of Income Tax (Exemptions) on

7/2/1992 wherein the queries raised were replied. It was pointed out that the beneficiaries are a class of persons having a common quality which unites them and this group of persons keeps on changing from time to time and hence it cannot be said that all the beneficiaries are identifiable. The benefit of medical relief and maintenance relief is given generally only to devotees and dedicated workers of Sree Rame Devi which was also certainly an object of the Trust. On the query that the corpus donations were received for services rendered, it was pointed out that the mere fact of offering prayers on behalf of the donor or feeding of the donor or feeding poor people on a particular day specified by the donor cannot be said to be services rendered to the donor. On the query that the charitable activity was not for the public at large, it was pointed out that the beneficiaries were devotees and dedicated workers of Sree Rama Devi. The trustees, therefore, sought the renewal of the certificate.

4. The representation was turned down and I.T.O. by his letter dated 27th March, 1992 declined to grant certificate. In his letter, he principally gave two reasons (1) the Trust is for identifiable beneficiaries and not for public at large and (2) the Trust was more in the nature of private charity and benefits if any,

to the public is incidental and insignificant. According to the I.T.O., the requirements of section 2(15) were not satisfied. It is this decision dated 27th March, 1992 that is challenged in the present petition.

5. A reply has been filed by one Mr.L.P.Tiwari, Income Tax Officer, OSD-II, Director of Income Tax (Exemption) Bombay. The petitioner has filed a rejoinder and further affidavit have also been filed placing additional facts on record.

6. Mr.Pardiwalla, learned counsel appearing for the petitioner submits that as things stand, the Trust concerned was constituted by the devotees of Sree Rama Devi. It was a small group of persons who are dedicated and apart from providing for the persons who had dedicated for the deity, the Trust also had its objective of helping poor, feeding them, providing medical facilities, etc. He submitted that it is not necessary that the Trust must be for the benefit of the world at large. He relied upon the Judgment of the Apex Court in the case of **Ahmedabad Rana Caste Association V/s. Commissioner of Income-tax, Gujarat** reported in **82 I.T.R. 704 (S.C.)**. In that matter, the beneficiaries of the Trust had to be members of the Rana community. The Apex Court however held that the

mere fact that a person of the Rana community who was not an original native of Ahmedabad had to prove his credentials according to the custom and usage of that community to get admitted into the community did not introduce a personal element which would detract from the impersonal nature of the common quality. Thereafter, the Apex Court held that:-

> " It is well-settled that an object beneficial to a section of the public is an object of general public utility. To serve a charitable purpose it is not necessary that the object should be to benefit the whole of mankind or all persons in a country or State. It is sufficient if the intention to benefit a section of public as distinguished from a specified individual is present. The section of the community sought to be benefited must be sufficiently definite and identifiable by some common quality of a public or impersonal nature. "

7. Mr.Pardiwalla referred to the reply filed by the petitioner Trust and pointed out if the Trust had been issued the certificate from the 1985 to 1991, there was no reason suddenly to deny the certificate. He referred to the decision of the Apex Court in the case of **Radhasoami Satsang V/s. Commissioner of Income Tax** reported in **193 I.T.R. 321**. The Apex Court in that case has held that in the absence of any material change justifying the department to take different view from that taken in earlier proceedings, the question of exemption should not have been reopened. Strictly

speaking, res judicata does not apply to income tax proceedings, as each assessment year is a separate unit. However, in the absence of any justification, the department cannot take a different view from the one it had taken in the earlier proceedings.

8. Mr.Sharma, learned counsel appearing for the respondents on the other hand submitted that the Trust had to be for a specific charitable purpose under section 2(15) of the Income Tax Act. The benefits were given to the devotees who were identifiable and, therefore, it could not be said that the Trust was for the benefit of the public at large. He drew our attention to the affidavit of Mr.Tiwari and pointed out from the return filed by the Trust it was seen that certain amounts were going to particular individuals from the maintenance account and also from the relief account. Last but not the least, he submitted that on facts, therefore, no interference was called for and if at all the petitioner were aggrieved, their remedy was to file an appeal to the Income Tax Appellate Tribunal and not approach this court in a Writ Petition.

9. So far the submissions of the alternate remedy is concerned, the petition has been admitted way back in 1992 and has been pending for last nearly 14 years. Besides, there is no specific provision of appeal to

the Tribunal against the declining of certificate under section 80 G of the Income Tax Act. That apart, the exercise of internal statutory remedy is a matter of discretion and considering that the writ petition is pending in this court since last 14 years, it would not be desirable to send the petitioner back to the Tribunal where there is no specific provision of appeal available.

10. It is true that small benefits were given to a few persons. However, as rightly pointed out by Mr. Pardiwalla that by itself cannot take away the charitable character of the Trust. The fact that some of the devotees have been given small amounts on monthly basis does not mean that all the beneficiaries are identifiable. Some of the devotees who are poor and need assistance are being given assistance on monthly basis. The fact that some of the devotees are given cash assistance cannot be a ground to hold that all the beneficiaries are identifiable. That apart, much more amount of the Trusts are being spent for the medical benefits, poor feeding and education assistance to a larger number of persons. Mr.Pardiwalla has pointed out that necessary documents were placed before the authorities concerned and they are available on record. This being the position, it cannot be said that the Trust was catering to the needs of only a few.

The grounds given by the I.T.O. in his decision dated 27th March, 1992, therefore, are not tenable. It is not possible to say that the Trust is for identifiable beneficiaries only and not for public at large. It is also not possible to say that it was more in the nature of a private Trust and the benefit to the public was incidental or insignificant. From the facts on record, in our view, the I.T.O. was in error in coming to the conclusion that the Trust does not satisfy the conditions for the grant of exemption under section 80G of the Income Tax Act. It is also material to note that in the earlier assessments of this very Trust, the objectives of the Trust were accepted and the assessment orders have been passed even after 1992 to the effect that the Trust is a public charitable Trust. On this material, we cannot but say that the order passed by the I.T.O. is not supported by material on record.

11. For the reasons stated, we have to interfere with the order and we hereby quash and set aside the decision of the I.T.O. dated 27th March, 1992. The petitioner Trust has suffered in the meanwhile. It will however have to apply once again for certificate under 80G of the Income Tax Act, 1961. When such an application comes up for consideration, the officer concerned shall keep in mind the above referred factual

and legal position and pass appropriate orders in accordance with law.

12. Petition is allowed. Rule is made absolute in the above terms with no order as to costs.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)